Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Mervyn Jacheil Fried

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on January 28, 2014 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Mervyn Jacheil Fried (the "Respondent").

DATED this 16th day of December, 2013.

"Bernadette Devine"

Bernadette Devine
Assistant Corporate Secretary

Mutual Fund Dealers Association of Canada
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Toronto, Ontario
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between June and July 2008, the Respondent failed to:

(a) use due diligence to learn the essential facts relative to clients DH and EH and two joint accounts that he opened for them in order to ensure, among other things, that any recommendations made and orders accepted for the clients would be suitable, contrary to MFDA Rule 2.2.1(a); and

(b) obtain a New Account Application Form ("NAAF") signed and dated by clients DH and EH in respect of each of the two joint accounts he opened for them, contrary to MFDA Rule 2.2.2.

Allegation #2: Between June 2008 and April 2009, the Respondent engaged in authorized discretionary trading in the two joint accounts of clients DH and EH by using blank order entry forms signed by the clients, or photocopies of the blank signed order entry forms, to purchase mutual funds in the accounts without obtaining instructions from the clients with respect to:

(a) the mutual funds to be purchased; and

(b) the amount of each mutual fund to be purchased;

contrary to MFDA Rules 2.3[1] and 2.1.1 and the terms of his registration as a mutual fund salesperson.

Allegation #3: Between June 2008 and April 2009, the Respondent failed to ensure that the trades he made in the two joint accounts of clients DH and EH were suitable for the clients, in keeping with the clients' investment objectives, and within the bounds of good business practice, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4: Between 2005 and 2010, the Respondent collected a total amount of approximately $9,953 in remuneration or fees from at least 21 clients in respect of business

[1] Amendments to the MFDA Rules were implemented on December 11, 2008. In this proceeding, Staff is relying on the version of MFDA Rule 2.3 that was in force in June 2008.

conducted by the Respondent on behalf of the Member, contrary to MFDA Rules 2.4.1, 1.1.1(b) and 2.1.1.

Allegation #5: Between 2005 and 2010, the Respondent:

(a) obtained and maintained blank pre-signed forms for at least 9 clients, including at least 7 forms that could be used to process trades in client accounts;

(b) processed trades in 23 client accounts using documents containing client signatures photocopied from blank pre-signed forms;

(c) processed trades for 19 clients without a client signature or a limited trading authorization on file;

(d) processed trades for 8 clients (for whom there was a signed limited trading authorization on file) without a client signature or any records of trading instructions received from the client and without indicating on the trade ticket that the trade was processed using a limited trading authorization; and

(e) processed trades for 3 clients using the client signature of a third party who did not have trading authority on the client account and without evidence on file that the third party had been granted power of attorney or trading authorization on the account;

contrary to MFDA Rules 2.3 and 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From November 24, 2004 to September 27, 2010, the Respondent was registered in Ontario as a mutual fund salesperson with Equity Associates Inc. ("Equity"), a Member of the

MFDA. The Respondent was terminated by Equity after it identified compliance deficiencies during an audit of the Respondent's client files in August 2010.

2. At all material times herein, the Respondent conducted business from a sub-branch office located in Vaughan, Ontario.

3. Prior to being registered with Equity, the Respondent was registered in Ontario as a mutual fund salesperson:

(a) from September 2, 1999 to November 19, 2004, with FundEX Investments Inc. ("FundEX"), a member of the MFDA; and

(b) from January 4, 1995 to November 19, 2004, with other mutual fund dealers.

4. The Respondent is not currently registered in the securities industry in any capacity.

Clients DH & EH

5. DH and EH are spouses.

6. In April 2004, DH and EH first met with the Respondent (who was then at FundEX). The Respondent had been recommended to them by their son-in-law.

7. DH was born in 1945. He had retired from his job in the fuel-purchasing department at Ontario Hydro in 2003. His investments consisted of some Guaranteed Investment Certificates ("GICs") and an RRSP account at another dealer in which he held some mutual funds.

8. EH was born in 1940. She was still working as a real estate agent but was approaching retirement. She also held some investments in an RRSP account at another dealer.

9. After meeting with the Respondent, EH opened two accounts at FundEX (an RRSP account and an open account) and transferred the investments that she held at the other dealer to FundEX. The Respondent was the mutual fund salesperson responsible for servicing her accounts at FundEX.

10. At the time client EH opened her accounts at FundEX, her New Account Application Form ("NAAF") recorded her investment knowledge as "Novice".

11. In November 2004, the Respondent transferred from FundEX to Equity.

12. On February 15, 2005, client DH opened an RRSP account and an open account at Equity in his own name and transferred the investments that he held at the other dealer to Equity. Client EH also transferred her RRSP account and open account from FundEX to Equity. The Respondent was the mutual fund salesperson at Equity responsible for servicing their respective accounts.

13. The investments that clients DH and EH held in their individual accounts at Equity were for the purpose of supplementing their retirement income. Client DH completed a NAAF for each of his individual accounts at Equity, as did client EH. The Know-Your-Client ("KYC") section of the NAAFs recorded that they each had "minimal" investment knowledge; that their investment objectives were "growth" and "income"; and that they had a "medium high" risk tolerance. Client DH identified his time horizon as 10+ years and client EH identified her time horizon as 6-9 years.

14. At all material times, clients DH and EH relied upon and deferred substantially or entirely to the Respondent for investment recommendations and advice. By virtue of their age and lack of investment knowledge and experience, they were vulnerable clients.

Spring 2008 - Investment of proceeds from sale of home

15. In August 2007, clients DH and EH instructed the Respondent to change their mailing address on file with Equity because they had purchased a new home from a developer that was being constructed in Innisfil, Ontario and intended to sell their current home located in Newmarket, Ontario.

16. The agreement of purchase and sale for the new house granted the developer considerable flexibility with respect to moving up or pushing back the closing date on limited notice. The closing date was initially projected to be July 23, 2008.

17. The purchase price of the new house was $240,350. Clients DH and EH paid $5,000 in deposits, leaving a balance due on closing of $235,350 plus/less any adjustments and any taxes, fees and other costs. Clients DH and EH also anticipated that they would require money for other expenses they expected to incur at or around the time of closing.

18. In order to ensure that they had sufficient money available to pay for their closing costs and other expenses, clients DH and EH sold their existing home in June 2008, which yielded net sale proceeds of approximately $268,000.

Allegation #1 – Account Opening

19. On June 26, 2008, clients DH and EH met with the Respondent to discuss the investment of the sale proceeds. During that meeting, clients DH and EH told the Respondent, among other things, that:

(a) the projected closing date for the new house had been pushed back to November 26, 2008;

(b) they could not afford to sustain any investment losses with respect to the $268,000 in sale proceeds they were giving to the Respondent to invest on their behalf because they would need the entire amount to pay the balance due on closing and to pay additional expenses at that time; and

(c) they would need to be able to redeem the investments purchased with the sale proceeds on short notice when the closing date on the new house was determined.

20. At the conclusion of the June 26th meeting, clients DH and EH instructed the Respondent to open a new joint account for them in which to hold the investments to be purchased with the proceeds from the house sale. They told the Respondent not to deposit any of the sale proceeds into any of the existing accounts that they had previously opened in their individual names.

21. The Respondent assured clients DH and EH that he would look after their investment and would ensure that their money would be available to them on closing.

22. At the Respondent's request, clients DH and EH provided the Respondent with three cheques at the June 26th meeting:

(a) a cheque payable to Equity in the amount of $200,000;

(b) a cheque payable to Equity in the amount of $68,000; and

(c) a cheque payable to the Respondent personally in the amount of $2,680.

23. The Respondent did not explain to the clients why he was asking that the sale proceeds be broken down into two separate cheques of $200,000 and $68,000, nor did he explain why he had requested that clients DH and EH provide him with an additional cheque in the amount of $2,680 payable to him personally.[2] As stated above, clients DH and EH were unsophisticated investors who deferred substantially or entirely to the Respondent and, as a result, did not question the cheque request, which they believed to be in the normal course of business.

24. The clients left the June 26th meeting with the understanding and belief that the Respondent would, in accordance with their instructions, invest the sale proceeds in a manner that would preserve the principal amount invested and enable them to access the money on short notice when the sale of their new home was scheduled to close.

25. The Respondent did not complete, nor did he ask clients DH or EH to complete, a NAAF signed and dated by them or any KYC forms in respect of the joint account to be opened in their names. The Respondent also did not prepare or maintain any notes or other documentation recording the clients' KYC information relative to the joint account or the content of his discussion with the clients, including in particular their investment objectives, risk tolerance and investment time horizon with respect to the investment of the sale proceeds.

26. On July 4, 2008, unbeknownst to clients DH and EH, the Respondent opened <u>two</u> new joint accounts in the names of clients DH and EH. (The Respondent did not obtain a NAAF or any KYC documents or make any notes in respect of the second joint account.)

[2] In fact, the third cheque in the amount of $2,680 is relevant to Allegation #4 below.

27. By failing to use due diligence to learn and record the essential facts relative to the two new joint accounts, including in particular the clients' risk tolerance, time horizon and investment objectives relative to two new joint accounts, the Respondent failed to comply with MFDA Rule 2.2.1(a).

28. By failing to obtain a NAAF signed and dated by the clients in respect of each of the new joint accounts, the Respondent failed to comply with MFDA Rule 2.2.2.

Allegation #2 – (Authorized) discretionary trading

29. During the June 26th meeting, the Respondent obtained the signatures of clients DH and EH on blank order entry forms that he used to process trades in client accounts at Equity.

30. On July 4, 2008, the Respondent arranged for the $68,000 cheque from clients DH and EH to be deposited into one of the two new joint accounts that he had opened (the "Small Joint Account") and the $200,000 cheque to be deposited into the other new joint account (the "Large Joint Account").

31. The Respondent (or an assistant acting on his directions) made one or more photocopies of a blank order entry form that had been signed by clients DH and EH and filled in forms to purchase 7 equity mutual funds in the Small Joint Account and 16 equity mutual funds in the Large Joint Account. The Respondent (or his assistant) exercised their discretion to determine the following elements of the purchases on blank, pre-signed or photocopied order entry forms:

(a) the mutual funds to be purchased;

(b) the amount of each mutual fund to be purchased; and

(c) the timing of the purchases.

32. The Respondent (or his assistant) wrote in the date "July 4, 2008" next to the signatures of clients DH and EH on the blank, pre-signed or photocopied order entry forms even though the clients had not met with the Respondent or signed the forms that day.

33. Although clients DH and EH understood that the Respondent would be investing the sale proceeds that they had provided to him, the Respondent did not inform the clients verbally or in writing as to which mutual funds he intended to purchase for them or the rationale for the purchases in the two new joint accounts. The only specific investment recommendation that the Respondent made at the June 26th meeting was that the clients consider investing at least $20,000 in a limited partnership product because of its potential tax advantages. Clients DH and EH declined this recommendation because they did not think that they understood the features of the product and they feared that it would not be consistent with their need for a secure and accessible (liquid) investment.

34. The Respondent used the blank order entry forms that the clients signed at the June 26th meeting, or photocopies of the forms, to purchase the investments in the joint accounts without consulting with or obtaining instructions from the clients.

35. At all material times, MFDA Rule 2.3.1 and the terms of the Respondent's registration as a mutual fund salesperson prohibited the Respondent from exercising discretionary trading authority over a client's account, whether or not he was authorized to do so by the client, either expressly or by acquiescence.

36. By engaging in the conduct described above, between June 2008 and April 2009, the Respondent engaged in authorized discretionary trading in the joint accounts of clients DH and EH, contrary to MFDA Rules 2.3 and 2.1.1 and the terms of his registration as a mutual fund salesperson.

Allegation #3 – Suitability of investments

37. As described in Allegation #1 above, clients DH and EH intended that the sale proceeds be invested in a manner that would preserve the principal amount invested and enable them to access the money on short notice when the sale of their new home was scheduled to close.

38. Contrary to the clients' instructions, the Respondent did not confine his selection of the mutual funds in which he invested the sale proceeds to low risk, or even medium risk, mutual funds.

39. The Respondent allocated the $68,000 deposited in the Small Joint Account approximately as follows:

- 37% (i.e.; $25,000) in 2 equity mutual funds with a low to moderate risk level;
- 26% in 2 equity mutual funds with a moderate risk level;
- 22% in 2 equity mutual funds with a moderate to high risk level; and
- 15% in 1 equity mutual fund with a high risk level.

40. The Respondent allocated the $200,000 deposited in the Large Joint Account approximately as follows:

- 5% (i.e.; $10,000) in 1 equity mutual fund with a low to moderate risk level;
- 57% in 9 equity mutual funds with a moderate risk level;
- 20% in 3 equity mutual funds with a moderate to high risk level; and
- 17% in 3 equity mutual funds with a high risk level.

41. In total, in spite of the intentions of clients DH and EH and the unique KYC information relevant to their new account(s) as noted above, the Respondent invested approximately $233,000 of the total $268,000 in house sale proceeds (or 87%) in mutual funds with a "moderate" risk rating or higher and $85,000 of the $268,000 (or 32%) was invested in high risk mutual funds.

42. Several weeks after the sale proceeds had been invested in the joint accounts, clients DH and EH informed the Respondent that the projected closing date for the purchase of their new home had been pushed back further from November 2008 to April 2009.

43. Between November 2008 and February 2009, the Respondent reassured client DH that in spite of the market downturn that had been reported in the media, clients DH and EH did not need to be concerned about the money that they had invested and required for the purchase of their new home.

44. Client DH and EH left on a trip to Europe in March 2009. Prior to their departure, they asked the Respondent to redeem the investments in their joint account and transfer the redemption proceeds to their bank account so that they would have the monies available to pay the closing costs for the new house purchase in April 2009.

45. The Respondent recommended that clients DH and EH keep their money invested until they returned from their trip. The Respondent did not tell the clients that their portfolio had declined in value below the amount required to pay the balance due on closing for their house purchase. Clients DH and EH accepted the Respondent's recommendation to remain invested but instructed the Respondent to ensure that the investments were redeemed and the proceeds transferred to their bank account by no later than April 15, 2009.

46. On April 15, 2009, clients DH and EH checked their bank account and discovered that no redemption proceeds had been deposited to the account.

47. Between April 15 and April 20, 2009, clients DH and EH attempted to contact the Respondent with increasing urgency to request the proceeds from the redemption of their investments but the Respondent was unresponsive.

48. When the clients finally reached the Respondent, the Respondent tried to persuade them to redeem only a portion of the investments held in the joint accounts. However, clients DH and EH required all of the money in order to proceed with their closing.

49. In a state of desperation caused by the Respondent's lack of responsiveness to their instructions, clients DH and EH borrowed money they required to pay the balance of their closing costs from a line of credit.

50. On April 27, 2009, two days before closing, clients DH and EH finally received deposits in their bank account comprising the proceeds of the redemptions of the investments in the joint accounts. The redemption proceeds amounted to only $193,573.39 of the $270,680[3] that they had provided to the Respondent at the meeting on June 26, 2008. From June 26, 2008 to April 27,

[3] Clients DH and EH believed that the Respondent was going to invest the total amount of $270,680 that they had provided to the Respondent at the June 26, 2008 meeting by way of the three cheques. In fact, as set out in greater detail in Allegation #4 below, unbeknownst to the clients, the Respondent applied the third cheque in the amount of $2,680 toward payment of a fee he was charging the clients. Accordingly, the Respondent only invested $268,000 on behalf of the clients.

2009, a period of approximately 10 months, the value of the clients' investments had declined by approximately $75,000.

51. As a consequence, clients DH and EH were unable to use the redemption proceeds to repay the full amount that they had borrowed from their line of credit or to pay other expenses that they had anticipated they would incur at or around the time of closing.

52. When clients DH and EH confronted the Respondent about the investment losses that they had sustained in the joint account(s)[4] and the Respondent's failure to stand behind his assurances that the sale proceeds would be invested in secure investments that would not decline in value, the Respondent discontinued all further communication with the clients.

53. By letter dated June 8, 2009, clients DH and EH submitted a complaint to Equity and requested compensation for their losses.

54. The mutual funds purchased by the Respondent in the joint accounts were not suitable for clients DH and EH having regard to, among other things, their personal and financial circumstances, including their risk tolerance, investment objectives and investment time horizon for the joint accounts and their inability to withstand investment losses.

55. By engaging in the conduct described above, between June 2008 and April 2009 the Respondent failed to ensure that the trades he made in the joints account of clients DH and EH were suitable for the clients, in keeping with the clients' investment objectives, and within the bounds of good business practice, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4 - Fees and remuneration

56. As described in Allegation #1 above, at the June 26, 2008 meeting the Respondent requested that clients DH and EH provide him with a cheque payable to him personally in the amount of $2,680.[5]

[4] Clients DH and EH did not appreciate, until after they filed their complaint, that the Respondent had opened two joint accounts for them.
[5] See paragraph 22 above.

57. The Respondent did not provide the clients with a bill, invoice or account in relation to the $2,680 amount at the June 26, 2008 meeting or thereafter. Clients DH and EH did not request, and were not aware that they were receiving, any services from the Respondent other than his usual services as the mutual fund salesperson responsible for handling their accounts. At all material times, they believed that the $2,680 amount, like the $268,000 amount, was going to be invested on their behalf.

58. During the course of the investigation of this matter, an invoice dated June 26, 2008 addressed to clients DH and EH was found in the Respondent's files. The invoice recorded the amount of $2,600 plus $147.17 in GST and stated that it was for, among other things, "Tax & Business Proposal- formulating of the plan and presentation". Clients DH and EH were not provided with a copy of this invoice and never received any work product of the type described on the invoice.

59. During the course of an audit that Equity conducted of the Respondent's client files after receiving the complaint from clients DH and EH, Equity discovered approximately 23 additional invoices or similar documents in the files of 19 other clients which indicated that the Respondent had invoiced and collected a total amount of approximately $7,273 in fees directly from those 19 clients. In total, the Respondent collected approximately $9,953 in remuneration and fees from a total of 21 clients (including the $2,680 he obtained from clients DH and EH). None of the fees or remuneration was processed for the account or through the facilities of Equity. There is no evidence that Equity authorized the Respondent to charge such fees directly to clients.

60. There is no evidence that the Respondent provided any goods or services to the clients other than in respect of the business that the Respondent carried out on behalf of the Member.

61. The fees and the remuneration that the Respondent collected directly from the 21 clients were in addition to the sales and trailing commissions that the Respondent received from Equity in relation to the clients' accounts.

62. In June 2010, Equity sent a cheque to clients DH and EH in the amount of $2,768 to reimburse them for the fee that the Respondent had collected from them directly. No other compensation has been paid to clients DH and EH by Equity or the Respondent.

63. By engaging in the conduct described above, the Respondent collected remuneration and fees totaling approximately $9,953 directly from 21 clients in relation to business carried on by the Respondent on behalf of the Member, contrary to MFDA Rules 2.4.1, 1.1.1(b) and 2.1.1.

Allegation #5 - Signature Irregularities

64. During the course of a routine sales compliance examination of Equity by the MFDA Compliance department, MFDA Staff reviewed client DH and EH's complaint and observed that the trades that were the subject of the complaint appeared to have been processed by the Respondent using photocopies of blank pre-signed order entry forms on which the Respondent had populated the particulars of the trades and then submitted the forms for processing.

65. On August 26 and 27, 2010, in response to the concerns identified by MFDA Staff, Equity compliance staff attended at the Respondent's sub-branch to conduct a review of the Respondent's client files. During this review, Equity compliance staff discovered the following documentation in the Respondent's client files relating to the period 2005 to August 2010:

(a) unprocessed blank forms signed by 9 clients of Equity and 2 unknown individuals including: 4 order entry forms, 2 MRS trade tickets, a Manulife withdrawal form, 3 T2033 account transfer forms, 2 new account application forms, and 1 B2B Trust financial account change form;

(b) 23 client files that each contained between 1 and 5 order entry forms which bore photocopied client signatures (one of which was a photocopy of a client's signature which had been cut and pasted on to the order entry form) that had been used to process trades in the client's account;

(c) 11 client communications (e-mails or faxes) to the Respondent associated with the accounts of 4 clients that communicated trade instructions to the Respondent on the same date that order entry forms were processed for the clients ostensibly bearing client signatures, which appears to indicate that the Respondent had processed the

trades using blank pre-signed order entry forms or order entry forms that contained falsified or photocopied signatures;[6]

(d) Trade tickets with no client signatures that had been used to process trades for 19 clients, none of whom had granted the Respondent a limited trading authorization and for which the Respondent was unable to produce any notes or records of instructions received from any of the 19 clients in connection with the trades;

(e) Trade tickets with no client signatures that had been processed on behalf of 8 clients for whom there was a signed limited trading authorization on file but the Respondent had not indicated on the trade ticket that he was relying on a limited trading authorization to process the trades and he was unable to produce any records of trading instructions received from the clients on behalf of whom the trades had been processed; and

(f) 3 order entry forms that had been processed on the basis of a signature obtained from a third party (family member) who did not have trading authority on the client account.

66. By engaging in the conduct described above, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the transaction of business, contrary to MFDA Rules 2.1.1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

[6] Equity concluded it was "highly suspicious and unlikely that the client would have met with the [Respondent] the same day as the [emailed or faxed] instructions were given".

- has failed to carry out any agreement with the MFDA;

- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000.00 per offence; and
(ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

(c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;

(d) revocation of the authority of such person to conduct securities related business;

(e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

(f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Shelly Feld
Fax: 416-361-9073
Email: sfeld@mfda.ca

A **Reply** shall be **filed** by:

(a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

(b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or

(c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfda.ca.

A **Reply** may either:

(i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

(ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

(a) to **serve** and **file** a **Reply;** or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

DM 318073 v2